

REMARKS

In response to the Final Office Action dated November 20, 2006, claims 2, 5, 8-10, 12 and 14-15 are amended and claims 1, 11 and 13 are canceled. New claim 16 has been added. Claims 2-10, 12 and 14-16 are now active in this application. No new matter has been added. The amendments are supported at least by the specification at page 15, line 11 to page 16, line 7, and at page 16, second to last line to page 17, line 10.

The Applicants appreciate the Examiner's allowance of claims 10-12 and 14; and indication of allowable subject matter in claims 2-7, 9, 13, and 15.

The Applicants appreciate the Examiner's withdrawal of the rejections of claims 1-10 under 35 U.S.C. § 101.

Claims 10-12 were objected to because of informalities. Claim 11 has been cancelled, and claims 10 and 12 have been amended according to the suggestions of the Examiner. Thus, Applicants respectfully submit that this objection should be withdrawn.

Claims 2-7 and 9 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 2 and 5 have been rewritten in independent form, including all of the limitations of the base claim and any intervening claims, according to the suggestions of the Examiner. Claims 3, 4, and 9 depend from independent claim 2; and claims 6 and 7 depend from independent claim 5. Thus, Applicants respectfully submit that this objection should be withdrawn.

New claim 16 depends from independent claim 5, and thus Applicant respectfully submits that claim 16 is allowable for at least the same reasons as independent claim 5.

Claims 13 and 15 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because claim 13 does not appear to further limit base claim 10. Claim 13 has been canceled, and claim 15 has been amended to depend directly from base claim 10. Thus, Applicants respectfully submit that these rejections should be withdrawn.

Claims 1 and 8 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Robinson et al., (US Patent 6,152,876).

The Office Action, at page 3, asserts that Robinson, at column 14, lines 42-47 discloses correcting the influence of a change in the state of an interface as a function of the tissue height above the sample, that is, the function is dependent on the thickness of a fluid layer.

Specifically, Robinson, column 14, lines 42-47 state: “[s]ince an index-matching fluid inherently causes a change of height in the tissue above the sample probe, the measurement of this height can aid in the overall glucose or other analyte [sic] measurement, while allowing a path length correction to be applied to the spectral measurement as a function of the tissue height above the sampler.”

Claim 1 has been cancelled, and claim 8 has been amended to depend from independent claim 2. As discussed above, claim 2 has been amended into allowable form according to the suggestions of the Examiner. Thus, Applicants respectfully submit that these rejections should be withdrawn.

Accordingly, it is urged that the application, as now amended, overcomes the rejection of record and is in condition for allowance. Entry of the amendment and favorable reconsideration of this application, as amended, are respectfully requested. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, Examiner is requested to call Applicants' attorney at the telephone number shown below.

10/815,687

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Michael E. Fogarty
Registration No. 36,139

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 MEF/EG:cac
Facsimile: 202.756.8087
Date: February 20, 2007

**Please recognize our Customer No. 53080
as our correspondence address.**

WDC99 1340023-2.043888.0311